

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
BLUEFIELD

GRANT THORNTON, LLP,

Plaintiff,

v.

CIVIL ACTION NO. 1:00-0655

FEDERAL DEPOSIT INSURANCE
CORPORATION,

Defendant;

and

FEDERAL DEPOSIT INSURANCE
CORPORATION,

Plaintiff,

v.

CIVIL ACTION NO. 1:03-2129

GRANT THORNTON, LLP,

Defendant;

and

GARY ELLIS,

Plaintiff,

v.

CIVIL ACTION NO. 1:04-0043

GRANT THORNTON, LLP,

Defendant.

MEMORANDUM OPINION

By Order entered May 25, 2004, the court denied Grant Thornton's Motion in Limine to Exclude Evidence of Other Confirmation Requests. The court did so because such evidence could be relevant to a determination of whether Grant Thornton

complied with the standard of care applicable to its work at Keystone. However, upon further reflection, the court does not believe such evidence is helpful and has not considered any evidence of other confirmation requests in issuing its findings of fact and conclusions of law in this case.

By Order entered May 25, 2004, the court denied the FDIC's motion for summary judgment or, in the alternative, motion to exclude evidence on Grant Thornton's 11th affirmative defense. Grant Thornton's 11th affirmative defense is the FDIC's alleged failure to mitigate damages, in particular, the \$10 million payment to United National Bank in November of 1998. The court denied the motion because a failure to mitigate could, under certain circumstances, be a defense applicable to the FDIC's claims. For that reason, the court concluded that it should allow introduction of mitigation evidence and that issues of material fact precluded entry of summary judgment on the defense.

The Clerk is directed to send a copy of this Memorandum Opinion to counsel of record.

IT IS SO ORDERED this 26th day of February, 2007.

ENTER:

A handwritten signature in cursive script, reading "David A. Faber", is written over a horizontal line.

David A. Faber
Chief Judge